

December 4, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Motion for Stay*

Name of Case: Chevron USA Inc.

Date of Filing: December 4, 2007

Case Number: TES-0010

Pending before this Office - the Office of Hearings and Appeals (OHA) - is a Chevron USA Inc. (Chevron) notice of appeal and simultaneous motion to stay or continue the appeal pending a concurrent federal court proceeding in which Chevron alleges DOE breach of contract. As set forth below, Chevron's motion to stay or continue is denied. The parties are instructed to file a proposed briefing schedule on or before January 7, 2008.

I. Background

The underlying appeal concerns the Elk Hills oil field (formerly Naval Petroleum Reserve No. 1). Chevron and DOE produced the field pursuant to a unit operating agreement, and the parties shared revenues based on estimates of the volume of hydrocarbons underlying their respective lands. In conjunction with the federal government's sale of its interest in the field, the parties agreed to a process to determine their final equity interests (the Equity Process Agreement).

Pursuant to that agreement, the DOE Assistant Secretary for Fossil Energy (AFSE) issued a determination for the Stevens Zone, the largest producing zone in the field. Chevron appealed; OHA granted the appeal in part and remanded the matter for a revised determination. *Chevron USA Inc.*, 29 DOE ¶ 80,203 (2005). The ASFE issued a revised determination, and Chevron filed the instant appeal.

In support of its request to stay or continue the proceeding, Chevron refers to a pending federal court proceeding in which Chevron alleges DOE breach of the Equity Process Agreement. Chevron maintains that the court proceeding will produce documents relevant to whether the ASFE complied with the Equity Process

Agreement in reaching the first and second Stevens Zone determinations. Chevron also maintains that the court proceeding may affect OHA's jurisdiction. Accordingly, Chevron argues, it would be "unfair, inappropriate, and wasteful" to require Chevron to proceed with briefing at this time. Reply at 1.

## II. The Applicable Standard

The parties agree that the DOE procedural regulations apply, but they disagree on which provision applies. Chevron argues that the extension-of-time provision applies. See 10 C.F.R. § 1003.6. DOE, on the other hand, argues that the stay provisions apply. See 10 C.F.R. § 1003.45(b).

The original DOE procedural regulations provided for stays. See 10 C.F.R. Part 205, Subpart I, 44 Fed. Reg. 36935 (June 25, 1979). In 1995, DOE promulgated new procedural regulations that also provided for stays. 10 C.F.R. Part 1003, Subpart D, 60 Fed. Reg. 15,006, 15,007 (March 21, 1995).

The stay provisions apply to requests for relief from specific agency requirements. Although the provisions do not define the term "stay," one provision refers to stays from "DOE rules, regulations, and generally applicable requirements." 10 C.F.R. § 1003.40. Under the current regulations, stays have been rare; the most recent request involved an Energy Information Administration reporting requirement. See *Southern Co.*, 28 DOE ¶ 82,505 (2002) (stay denied). Thus, the language of the stay provisions and precedent indicate that the stay provisions apply where a party requests relief from a specific agency requirement.

Given the foregoing, Chevron's request is not a request for stay. Chevron does not request relief from a specific regulatory requirement. Instead, Chevron requests a continuance of the appeal proceeding for an unspecified duration.

The DOE procedural regulations do not have a specific provision governing continuances. That makes sense because a continuance is a type of extension request. Accordingly, we agree with Chevron that its request is for an extension of time and, therefore, subject to the "good cause" standard of that provision. See 10 C.F.R. § 1003.6. What constitutes "good cause" is decided on a case-by-case basis after consideration of the particular circumstances presented. Thus, claims of hardship, inequity, and inefficiency may, depending on the particular circumstances of a case, provide a basis for a continuance.

III. Whether "Good Cause" Exists to Continue the Proceeding

Chevron acknowledges that, in 2004, it requested a continuance of the first Stevens Zone appeal proceeding and that we denied that request. Chevron argues that the instant request is different. Chevron states that it has received additional information supporting its claim of breach. Chevron also states that it expects to receive more information and a court decision in the near future, and the latter may affect OHA's jurisdiction. Finally, Chevron maintains, the equity finalization process is at a standstill and, therefore, a continuance will not delay the completion of that process.

Chevron's arguments do not support a continuance. As we stated in 2004, allegations of DOE breach of the Equity Process Agreement are beyond our purview. Moreover, we are not persuaded that Chevron needs additional information to pursue the instant appeal. Chevron's asserted need for documents depends, in part, on the scope of the appeal, an issue on which the parties differ. The parties should address the scope of the appeal in their briefs.

As the foregoing indicates, we see no basis for a continuance. Accordingly, the parties are instructed to submit a proposed briefing schedule on or before January 7, 2008. We anticipate a schedule in which oral argument is held no later than June 2008.

IT IS THEREFORE ORDERED THAT:

(1) Chevron's request to continue the proceeding in Chevron USA, Inc., Case No. TEA-0010, be and hereby is denied.

(2) The parties shall file a proposed briefing schedule on or before January 7, 2008.

Thomas L. Wieker  
Deputy Director  
Office of Hearings and Appeals

Date: December 4, 2007